

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

2011 AUG 31 PM 2: 31

CELA

FIRST GENERAL COUNSEL'S REPORT

MUR: 6291  
DATE COMPLAINT FILED: May 17,  
2010  
LAST RESPONSE RECEIVED: June 1,  
2010  
DATE ACTIVATED: July 6, 2010

EXPIRATION OF STATUTE OF  
LIMITATIONS:  
earliest 1/28/2015, latest 11/2/2015

COMPLAINANT:

Kay Stelling

RESPONDENT:

Founding Principles, LLC

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 433  
2 U.S.C. § 434  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441d  
2 U.S.C. § 441f  
11 C.F.R. § 100.22  
11 C.F.R. § 100.26  
11 C.F.R. § 100.29  
11 C.F.R. § 110.11(a)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

The complaint alleges that Founding Principles, LLC ("Founding Principles" or  
"FP") may have violated the disclaimer and political committee registration and reporting  
requirements of the Federal Election Campaign Act of 1971, as amended ("the Act").  
Founding Principles sold "TEA Party" lapel pins through its website,

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1 "TakeBackTheSeats.com," on which the company pledged to donate 25% of its sales  
2 proceeds to unnamed conservative candidates. The complaint alleges that FP failed to  
3 include disclaimers on the TakeBackTheSeats.com website and on advertisements it  
4 placed on the website of Florida talk radio station WFLA-AM 540. Further, the  
5 complaint alleges that FP raised funds for federal candidates through its website, and  
6 should therefore have registered with the Commission as a political committee and filed  
7 reports disclosing its receipts and disbursements.

8 The founder of FP, attorney Jeff Enkhahn, responded to the complaint on behalf  
9 of FP. The response does not address the disclaimer allegation, but addresses the political  
10 committee status allegation by stating that "Founding Principles is not a political action  
11 committee," but it is "a for profit limited liability company ... in the business of selling  
12 lapel pins." Response at ¶¶ 1 and 2. The response indicates that FP and/or its members  
13 intended to make contributions to federal candidates, but that as of the date of the  
14 response, they had not done so. Response at ¶ 4. Specifically, FP intended to make 25%  
15 of its revenue available for candidate contributions, but planned to execute the  
16 contributions by making a taxable distribution to its members in accordance with their  
17 respective ownership percentages in the limited liability company, and then each member  
18 would make contributions to candidates and/or organizations with the distributed money.  
19 Response at ¶ 5.<sup>1</sup>

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<sup>1</sup> As of September 27, 2010, FP's website was no longer operating, and it is possible the organization is defunct. If FP carries out the plan by which it may require partners/shareholders to make contributions at FP's direction, it is possible that FP and/or its members could be in violation of the Act's prohibition on making contributions in the name of another in 2 U.S.C. § 441f, the prohibition barring corporations from making contributions to candidate committees in 2 U.S.C. § 441b(a), and/or the partnership contribution regulations in 11 C.F.R. § 110.1(e), but as we lack information on exactly how the prospective plan would have worked or whether it was ever implemented, we do not address these issues here.

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1           The available information indicates that FP has not exceeded the Act's  
2           expenditure or contributions thresholds that would trigger political committee status and  
3           possible registration and reporting obligations under 2 U.S.C. §§ 433 and 434. *See*  
4           2 U.S.C. § 431(4)(A). Available information also indicates that FP's advertising and  
5           website did not require disclaimers under 2 U.S.C. § 441d. Therefore, we recommend  
6           that the Commission find no reason to believe that Founding Principles, LLC has violated  
7           the Act in this matter.

## 8           **II. FACTUAL AND LEGAL ANALYSIS**

### 9           **A. Background**

10           The allegations in this matter stem from advertisements FP placed on the website  
11           for Florida talk radio station WFLA-AM 540 ([www.540wfla.com](http://www.540wfla.com)). The complaint  
12           alleges that certain streaming advertisements and a banner ad placed by FP on WFLA-  
13           AM's website failed to include disclaimers. Further, the complaint alleges that FP's  
14           website, to which the ads directed viewers, also lacked required disclaimers. Lastly, the  
15           complaint alleges that FP is a political committee and as such, should register with the  
16           Commission and file disclosure reports of its receipts and disbursements. Complaint at 1.

17           The complaint includes an image of the banner advertisement placed on the radio  
18           station website promoting [www.TakeBackTheSeats.com](http://www.TakeBackTheSeats.com), the website established by FP  
19           to sell TEA-party themed pins. The banner advertisement featured images of some of the  
20           available pins and the name of the website [TakeBackTheSeats.com](http://www.TakeBackTheSeats.com) in bold text. The ad  
21           also stated "exercise your right to life, liberty, and the pursuit of happiness" and  
22           "Demand a better government!" *See* ad image in complaint (attached here as Attachment  
23           1). The complainant also alleges that FP posted other streaming ads for

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1 www.TakeBackTheSeats.com on the WFLA website, but did not attach images of those  
2 ads to the complaint, and these images could not be located from the WFLA website. See  
3 www.540wfla.com. Prior to its closure, FP's website, TakeBackTheSeats.com, contained  
4 a mission statement, a list of blog posts, and a "Buy Your Pins Now!" button. The  
5 website also had an application for candidates who wished to qualify for a portion of the  
6 money to be disbursed by FP. The website did not name any specific candidates or  
7 committees supported by the company or its members, and did not indicate that any  
8 candidate had applied to be, or had been accepted as, a recipient of any future FP  
9 contribution.

10 In its response, FP's founder, Jeff Feldhahn, states that FP is a Georgia "for-profit  
11 limited liability company composed of multiple members, ... in the business of selling  
12 lapel pins..." Response at ¶¶ 1 and 2. The website offered the pins for \$4.00 each, 3 for  
13 \$11.00, or 5 for \$18.00, and FP's sales website appeared to be similar to other websites in  
14 the same sales field, in that it made sales directly on-line, accepted credit cards, and  
15 charged sales taxes and shipping fees.<sup>2</sup>

16 The response continues that "the individual members of Founding Principles have  
17 committed to providing contributions to political candidates or organizations that support  
18 conservative political beliefs." Response at ¶ 2. The plan to make these contributions, as  
19 explained on the TakeBackTheSeats.com website and in FP's response, is that 25% of the  
20 company's sales revenue will be designated for contributions to candidates or  
21 organizations that support conservative political beliefs. *Id.* Though the website

<sup>2</sup> Examination of [www.cafepress.com](http://www.cafepress.com), an on-line marketplace that sells politically-themed buttons among thousands of other customizable items, indicates that numerous political buttons or pins are commercially available in the \$3-\$5 range. A similar site, [www.zazzle.com](http://www.zazzle.com), offers political buttons for \$1.95-\$5. (Sites last visited July 13, 2011).

1 contained an application for candidates who would like to be considered for receipt of the  
2 proceeds, it is unclear how FP would decide to act on these applications, if any were  
3 received. See [www.TakeBackTheSeats.com](http://www.TakeBackTheSeats.com). Nonetheless, FP stated that once it  
4 identifies those candidates or organizations meriting support, "Founding Principles will  
5 make a taxable distribution to its members in accordance with their respective ownership  
6 percentages in the LLC, and then each member will make individual contributions to  
7 candidates and/or organizations – while remaining within the FEC's Individual  
8 Contribution Limits." Response at ¶ 5. The website also included a statement at the  
9 bottom of the home page stating "NOTICE: All transactions will be in compliance with  
10 the Federal Election Commission Guidelines for contributions." See  
11 [www.TakeBackTheSeats.com](http://www.TakeBackTheSeats.com). The response states that no contributions had yet been  
12 made (although it has sold merchandise valued at \$2,635), and it appears that no  
13 candidates have been selected to receive contributions, based on the last visible version of  
14 the website. Response at ¶ 4.

15 **B. Political Committee Status**

16 The Act defines a "political committee" as any committee, club, association, or  
17 other group of persons that receives "contributions" or makes "expenditures" for the  
18 purpose of influencing a federal election which aggregate in excess of \$1,000 during a  
19 calendar year. 2 U.S.C. § 431(4)(A). The Act defines a contribution as "any gift,  
20 subscription, loan, advance, or deposit of money or anything of value made by any  
21 person for the purpose of influencing any election for Federal office."  
22 2 U.S.C. § 431(8)(A)(i). An expenditure is "any purchase, payment, distribution, loan,  
23 advance, deposit, or gift of money or anything of value, made by any person for the

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1 purpose of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i). An  
2 organization will not be considered a “political committee” unless its “major purpose is  
3 Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”  
4 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg.  
5 5595, 5597 (Feb. 7, 2007). *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v.*  
6 *Massachusetts Citizens for Life, Inc. (MCFL)*, 479 U.S. 238, 262 (1986). Political  
7 committees must register with the Commission and must file disclosure reports detailing  
8 all contributions and expenditures. *See* 2 U.S.C. §§ 433 and 434.

9 In analyzing whether FP has triggered political committee status, we conclude  
10 there is no information showing it received over \$1,000 in contributions or made over  
11 \$1,000 in expenditures. Neither the complaint nor the response (nor the  
12 [www.takebacktheseats.com](http://www.takebacktheseats.com) website) indicates that FP solicited contributions for any  
13 clearly identified candidate or election before shutting down the FP website. The  
14 response states that FP has sold \$2,635 worth of lapel pins, which would result in it  
15 distributing \$658.75 for contributions if FP followed through with its plan to distribute  
16 25% of proceeds for contributions. However, at this point, Respondent stated that “no  
17 distributions/contributions have yet been made by Founding Principles or its individual  
18 members,” which would mean that FP has not yet made any contributions to federal  
19 Committees. *See* Response at ¶ 4, *see also* 2 U.S.C. § 431(8). A search of reports filed  
20 with the Commission for any contributions from FP or the two names that public  
21 information indicates are associated with FP, Jeff Feldhahn and David Gilmore, has  
22 produced no information that would contradict this assertion in the Response.

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1 While it is clear FP has neither solicited nor made any direct contributions, we  
2 also conclude that its plan does not appear to generate in-kind contributions or  
3 expenditures either through the sale of the TEA Party memorabilia or through the actual  
4 cost of manufacturing the items. The Commission has addressed in numerous Advisory  
5 Opinions whether plans to create and sell memorabilia related to federal candidates or  
6 committees generated contributions that must be recorded and reported to the  
7 Commission. *See, e.g.*, AO 1988-17 (Election Concepts, Inc.), AO 1989-21 (Create A  
8 Craft), and AO 1994-30 (Conservative Concepts, Inc.). However, all of these AOs  
9 involved plans to enter into contracts or agreements with specific candidates or  
10 committees to produce desired candidate-specific products, whereas here FP is acting  
11 independently in producing and selling its own pins without reference in its advertising or  
12 on its website to specific candidates or committees.

13 Nevertheless, portions of prior commercial sales plans considered by the  
14 Commission may be relevant to this analysis. In AO 1988-17 (Election Concepts, Inc.),  
15 the Commission conditionally approved the sale of candidate-specific medallions directly  
16 to the public after the 1988 election, stating that "so long as ECI pursues this venture on a  
17 commercial basis for the purpose of making a profit, the plan is not prohibited by the Act."  
18 *See* AO 1988-17 (Election Concepts, Inc.) at 3. Similarly, FP's sales appear to be more  
19 like *bona fide* commercial activity. In prior MURS and AOs, the Commission has  
20 repeatedly considered whether a plan to market merchandise or media related to a  
21 candidate or party generated contributions by providing something of value to the  
22 candidate or committee, or whether the plan was a profit-making enterprise that did not  
23 generate contributions. *See* AO 1989-21 (Create A Craft) and MURs 1166/1180

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1 (Franklin Mint/DNC and RNC) (Commission found sales plans to be generating  
2 contributions), *but see* AO 1988-17 (Election Concepts, Inc.), AO 1994-30 (Conservative  
3 Concepts, Inc.), AO 2008-10 (voterVoter.org), MURs 5474/5539 (Dog Eat Dog Films,  
4 Inc., and Fahrenheit 9/11)(Commission found sales plans not to be generating  
5 contributions). FP states it is a for-profit organization in the business of selling lapel  
6 pins, and we have no information that FP's pin sales have generated any contributions for  
7 a specific committee. Thus, FP's sales activities appear to be *bona fide* commercial  
8 activity, and have not generated in-kind contributions.

9 It also appears that FP's spending on the manufacturing of its goods has not  
10 generated in-kind contributions either. In AO 1989-21 (Create A Craft), the Commission  
11 determined that a sole proprietorship selling custom cartoon merchandise featuring  
12 specific candidates, with 10% of the sale price being forwarded by contractual agreement  
13 to the candidate's committee, might be making contributions by advancing the costs of  
14 manufacturing the merchandise. The Commission advised that

15 It appears that you will be providing some goods and services, and  
16 perhaps funds, before receiving payment from those purchasing the items.  
17 This would include materials and time used in creating the designs and  
18 solicitation fliers, and funds to the extent that the manufacturer will  
19 require a deposit or a minimum purchase. As such you will be advancing  
20 or, in effect, loaning funds to assist the participating committees in  
21 fundraising. Such funds are contributions to the committee that benefits,  
22 and remain contributions to the extent that you remain unpaid. 11 CFR  
23 100.7(a)(1)(i)(B). Accordingly, you must keep records as to the amounts  
24 expended by you for each committee and ensure that such amounts do not  
25 exceed the limits of 2 U.S.C. 441a. In addition, for recordkeeping and  
26 reporting purposes, you must inform the committees of your outlays in  
27 time for the committees to file timely reports in accordance with 2 U.S.C.  
28 434(a) and 11 CFR 104.5.

29  
30 AO 1989-21 (Create A Craft) at 2.

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1 FP has not notified us of how much it has spent designing the pins and having  
2 them manufactured and placed for sale. However, the advice given in AO 1989-21  
3 appeared to be based on the fact that, because the memorabilia was to be created with the  
4 authorization of specific candidates and committees, the vendor would know to whom the  
5 start-up costs should be allocated. The guidance given instructs the vendor to "inform the  
6 Committees of your outlays in time for the committees to file timely reports in  
7 accordance with 2 U.S.C. 434(a) and 11 CFR 104.5." AO 1989-21 (Create A Craft) at 2.  
8 As we have no information that FP was authorized to fundraise for any committee  
9 through its pin sales, any FP proceeds that flowed to a committee would do so only after  
10 the fact of the sales.<sup>3</sup> Therefore, the fact that FP has not designated any committees to  
11 receive the proceeds and has not created any memorabilia that features a particular  
12 candidate on behalf of a committee indicates that FP's commercial start-up expenses are  
13 not in-kind contributions or expenditures under the Act.<sup>4</sup>

14 Based on the foregoing, FP does not appear to have reached the threshold of  
15 contributions or expenditures which aggregate in excess of \$1,000 during a calendar year,

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<sup>3</sup> In contrast to *Founding Principles*, the Commission determined that the sole proprietor in AO 1989-21 would be an authorized agent of the committees for which she designed and sold merchandise. In that circumstance, the Commission determined that the entire purchase price would constitute a contribution. *Id.* at 3. As *Founding Principles* has not proposed acting as an authorized agent of any particular candidate or campaign, and has not determined any candidates to whom it will lend its support, this analysis would not appear to apply.

<sup>4</sup> Also, the Commission has previously considered what are termed "affinity programs" in the AO context, in which vendors receive access to a committee's contact list to market a discount or benefit program in exchange for enrolled individuals' ability to direct a portion of their spending through the affinity program to the committee. See AO 2003-16 (Providian) (approved a rebate credit card program for the national party Committees) and AO 2008-18 (Mid-Atlantic Benefits) (prohibited a prescription drug discount card intended to benefit state and national political party Committees). *Founding Principles'* pin sales may be in some sense more similar to affinity programs than to prior memorabilia sales AOs, in that FP seeks greater sales of pins by appealing to buyers who would wish that a portion of their purchase price be given to conservative candidates. However, the affinity program AOs do not address the situation presented by FP, in which the vendor (FP) seeking to market to the affinity group (TEA party supporters) does so independently of the third-party entities intended to be benefitted (conservative candidates who might be attractive to TEA party supporters).

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1 thus it has not triggered political committee status and has no registration or reporting  
2 obligations to the Commission. As such, there is no need to consider whether FP's major  
3 purpose is federal campaign activity. In sum, there is no reason to believe that FP has  
4 triggered political committee status, and therefore there is no reason to believe that  
5 Founding Principles LLC violated 2 U.S.C. §§ 433 and 434.

6 **C. Disclaimers**

7 The complaint alleges that FP failed to include disclaimers on the  
8 TakeBackTheSeats.com website and on advertisements it placed on WFLA's website.  
9 The following communications must include disclaimers: (1) all public communications  
10 made by a political committee; (2) all public communications by any person that  
11 expressly advocate the election or defeat of a clearly identified candidate; (3) all public  
12 communications by any person that solicit any contribution; and (4) all electioneering  
13 communications by any person. 2 U.S.C. § 441d; 11 C.F.R. § 110.11(a). A public  
14 communication is a communication made by means of any broadcast, cable, or satellite  
15 communication, newspaper, magazine, outdoor advertising facility, mass mailing, or  
16 telephone bank to the general public, or any other form of general public political  
17 advertising. 11 C.F.R. § 100.26. The term "general public political advertising" shall not  
18 include communications over the Internet, except for communications placed for a fee on  
19 another person's Web site. *Id.* However, disclaimers are required for Internet websites of  
20 political committees available to the general public. 11 C.F.R. § 110.11(a)(1). Express  
21 advocacy includes a communication that "uses phrases ... campaign slogan(s) or  
22 individual word(s), which in context can have no other reasonable meaning than to urge  
23 the election or defeat of one or more clearly identified candidate(s)..." 11 C.F.R.

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1 § 100.22(a). *See also* 11 C.F.R. § 100.22(b). An electioneering communication is a  
2 communication distributed by means of broadcast, cable, or satellite communication that  
3 refers to a clearly identified candidate for Federal office and is distributed to a targeted  
4 relevant electorate within prescribed time frames (30 days before a primary or 60 days  
5 before the general election). 11 C.F.R. § 100.29.

6 FP had no obligation to place disclaimers on its own website or on the  
7 advertisement(s) it placed on the radio station website. FP's ad and website are not  
8 included in the first category of communications that require disclaimers because, as  
9 shown above, FP is not a political committee.<sup>5</sup> *See* 11 C.F.R. § 110.11(a)(1). Second,  
10 the only available FP advertisement, the banner ad, does not include express advocacy  
11 because it does not advocate for or against any clearly identified candidate. *See*  
12 11 C.F.R. §§ 100.22; 110.11(a)(2). FP's banner advertisement featured images of some  
13 of the available pins and the name of FP's website, TakeBackTheSeats.com, in bold  
14 lettering. The ad also stated "exercise your right to life, liberty, and the pursuit of  
15 happiness" and "Demand a better government!" *See* ad image in complaint. Thus, the ad  
16 does not expressly advocate for the election or defeat of any clearly identified candidate,  
17 and therefore does not require a disclaimer under 11 C.F.R. § 110.11(a)(2). Third, FP's  
18 advertisement does not solicit contributions. FP's advertisement includes no request for  
19 any contribution or donation of funds, and does not even directly advertise that FP has  
20 pins for sale, as it merely shows images of the pins. Therefore, FP's advertisement does  
21 not require a disclaimer under 11 C.F.R. § 110.11(a)(3). Lastly, FP's advertisement does  
22 not require a disclaimer under 11 C.F.R. § 110.11(a)(4) because the text and images of

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<sup>5</sup> In addition, FP's website is not a public communication, and therefore 11 C.F.R. § 110.11(a)(2)-(4) does not apply to FP's website.

the advertisement are not an electioneering communication in that they do not refer to a clearly identified candidate for Federal office and were disseminated over the internet. See 11 C.F.R. § 110.11(a)(4), *see also* 11 C.F.R. § 100.29(c)(1). Therefore, there is no reason to believe Founding Principles violated 2 U.S.C. § 441d.


**III. RECOMMENDATIONS**

1. Find no reason to believe that Founding Principles, LLC violated 2 U.S.C. §§ 433 or 434.
2. Find no reason to believe that Founding Principles, LLC violated 2 U.S.C. § 441d.
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letters.
5. Close the file.

8/31/11  
Date

  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

  
Peter G. Blumberg  
Assistant General Counsel

  
Audra Hale-Maddox  
Attorney

**Attachments:**

1. Ad Image from Complaint

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**WFLA**  
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TAKE BACK THE SEATS. com

